

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOHN M. JOHNSON,
Plaintiff,

v.

Case No. 15-CV-0524

SECRETARY EDWARD WALL, et al.
Defendants,

DECISION AND ORDER

Plaintiff, John M. Johnson, who is proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983, along with a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. By order dated May 7, 2015, I ordered plaintiff to forward to the Clerk of Court by May 29, 2015, the sum of \$8.95 as an initial partial filing fee in this action. I advised plaintiff that, upon payment of this fee, the court would determine whether the action can proceed in forma pauperis. To date, plaintiff has not paid this partial filing fee. From this failure to pay the initial filing fee this court infers that plaintiff no longer wants to prosecute this action.

However, before dismissing this case for failure to pay the initial fee, I must determine whether the prisoner is at fault for the non-payment. See Thomas v. Butts, 745 F.3d 309, 312-13 (7th Cir. 2014). A court may not dismiss the suit of a prisoner who has a lack of funds in the account. Id. at 312; see also § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because he

intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” Thomas, 745 F.3d at 312 (citations and internal quotation omitted).

At the time he filed his complaint, plaintiff advised the court that he would be released in a few days and provided the court with his non-prison address. It is to that address that the court mailed the May 7, 2015, Order. Although plaintiff has been released from custody, he was incarcerated when he filed the complaint. Therefore, the Prison Litigation Reform Act applies to this case, and plaintiff must pay his initial partial filing fee before the case can proceed.

THEREFORE, IT IS ORDERED that plaintiff shall show cause why this case should not be dismissed for nonpayment of the initial partial filing fee.

IT IS FURTHER ORDERED that on or before **Friday, June 26, 2015**, plaintiff shall provide the court with information regarding why the initial partial filing fee has not been paid.

Dated at Milwaukee, Wisconsin, this 3rd day of June, 2015.

s/ Lynn Adelman

LYNN ADELMAN
District Judge